

2007 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB40)

Received: **06/27/2007**

Received By: **rnelson2**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-7814**

By/Representing: **Carmichael**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

LFB:.....Carmichael -

Topic:

Drug dealer liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	rnelson2 06/27/2007	wjackson 06/27/2007					
/1			rschluet 06/28/2007		cduerst 06/28/2007		
/2	rnelson2 07/03/2007	lkunkel 07/03/2007	nmatzke 07/03/2007		lparisi 07/03/2007		

FE Sent For:

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/P1	rnelson2 06/27/2007	wjackson 06/27/2007					
/1			rschluet 06/28/2007		cduerst 06/28/2007		

Handwritten notes: 1/2/mk 7/3, nwn 7/3, nwn 7/3

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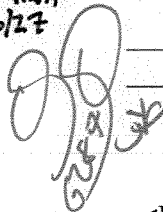
<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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6/27



FE Sent For:

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Model Act

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The Model Drug Dealer Liability Act:

The Drug Dealer Liability Act has been adopted as Model legislation by the bi-partisan **American Legislative Exchange Council**. State legislatures should begin with the Model Act and not another states' Drug Dealer Liability Act to avoid adopting a "**clone of a clone**" and thus possibly weaken the interrelationships of the various provisions of the Act as they adopt it in their state. The Model Act has been carefully written by experienced litigators and prosecutors so that its various provisions work together in actual litigation in lawsuits against drug dealers in a community. Adopting a "clone of a clone" by beginning with the Act as adopted by another state runs the risk of weakening the effectiveness of Act's various provisions.

The following is the ***text of the American Legislative Exchange Council's Model Drug Dealer Liability Act:***

Section 1. Title.

This Act may be cited as the Drug Dealer Liability Act.

Section 2. Purpose.

The purpose of this Act is to provide a civil remedy for damages to persons in a community injured as a result of illegal drug use. These persons include parents, employers, insurers, governmental entities, and others who pay for drug treatment or employee assistance programs, as well as infants injured as a result of exposure to drugs in utero ("drug babies"). The Act will enable them to recover damages from those persons in the community who have joined the illegal drug market. A further purpose of the Act is to shift, to the extent possible, the cost of the damage caused by the existence of the illegal drug market in a community to those who illegally profit from that market. The further purpose of the Act is to establish the prospect of substantial monetary loss as a deterrent to those who have not yet entered into the illegal drug distribution market. The further purpose is to establish an incentive for drug users to identify and seek payment for their own drug treatment from those dealers who have sold drugs to the user in the past.

Section 3. Findings.

The legislature finds and declares all of the following:

a. Every community in the country is affected by the marketing and distribution of illegal drugs. A vast amount of state and local resources are expended in coping with the financial, physical, and emotional toll that results from the existence of the illegal drug market. Families, employers, insurers, and society in general bear the substantial costs of coping with the marketing of illegal drugs. Drug babies and parents, particularly those of adolescent illegal drug users, suffer significant non-economic injury as well.

b. Although the criminal justice system is an important weapon against the illegal drug market, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of illegal drugs. The persons who have joined the illegal drug market should bear the cost of the harm caused by that market in the community.

c. The threat of liability under this Act serves as an additional deterrent to a recognizable segment of the illegal drug network.

A person who has non-drug related assets, who markets illegal drugs at the workplace, who encourages friends to become users, among others, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time casual dealer who has not yet made substantial profits. This Act provides a mechanism for the cost of the injury caused by illegal drug use to be borne by those who benefit from illegal drug dealing.

d. This Act imposes liability against all participants in the illegal drug market, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. The small dealers increase the number of users and are the people who become large dealers. These small dealers are most likely to be deterred by the threat of liability.

e. A parent of an adolescent illegal drug user often expends considerable financial resources, typically in the tens of thousands of dollars, for the child's drug treatment. Local and state governments provide drug treatment and related medical services made necessary by the distribution of illegal drugs. The treatment of drug babies is a considerable cost to local and state governments. Insurers pay large sums for medical treatment relating to drug addiction and use. Employers suffer losses as a result of illegal drug use by employees due to lost productivity, employee drug-related workplace accidents, employer contributions to medical plans, and the need to establish and maintain employee assistance programs. Large employers, insurers, and local and state governments have existing legal staffs that can bring civil suits against those involved in the illegal drug market, in appropriate cases, if a clear legal mechanism for liability and recovery is established.

f. Drug Babies, who are clearly the most innocent and vulnerable of those affected by illegal drug use, are often the most physically and mentally damaged due to the existence of an illegal drug market in a community. For many of these babies, the only hope is extensive medical and psychological treatment, physical therapy, and special education. All of these potential remedies are expensive. These babies, through their legal guardians and through court appointed guardians ad litem, should be able to recover damages from those in the community who have entered and participated in the marketing of the types of illegal drugs that have caused their injuries.

g. In theory, civil actions for damages for distribution of illegal drugs can be brought under existing law. They are not. Several barriers account for this. Under existing tort law, only those dealers in the actual chain of distribution to a particular user could be sued. Drug babies, parents of adolescent illegal drug users, and insurers are not likely to be able to identify the chain of distribution to a particular user. Furthermore, drug treatment experts largely agree that users are unlikely to identify and bring suit against their own dealers, even after they have recovered, given the present requirements for a civil action.

Recovered users are similarly unlikely to bring suit against others in the chain of distribution, even if they are known to the user. A user is unlikely to know other dealers in the chain of distribution. Unlike the chain of distribution for legal products, in which records identifying the parties to each transaction in the chain are made and shared among the parties, the distribution of illegal drugs is clandestine. Its participants expend considerable effort to keep the chain of distribution secret.

h. Those involved in the illegal drug market in a community are necessarily interrelated and interdependent, even if their identity is unknown to one another. Each new dealer obtains the benefit of the existing illegal drug distribution system to make illegal drugs available to him or her. In addition, the existing market aids a new entrant by the prior development of people as users. Many experts on the illegal drug market agree that all participants are ultimately likely to be indirectly related. That is, beginning with any one dealer, given the theoretical ability to identify every person known by that dealer to be involved in illegal drug trafficking, and in turn each of such others known to them, and so on, the illegal drug market in a community would ultimately be fully revealed.

i. Market liability has been created with respect to legitimate products by judicial decision in some states. It provides for civil recovery by plaintiffs who are unable to identify the particular manufacturer of the product that is claimed to have caused them harm, allowing recovery from all manufacturers of the product who participated in that particular market. The market liability theory has been shown to be destructive of market initiative and product development when applied to legitimate markets. Because of its potential for undermining markets, this Act expressly adopts a legislatively crafted form of liability for those who intentionally join the illegal drug market. The liability established by this Act grows out of but is distinct from existing judicially crafted market liability.

j. The prospect of a future suit for the costs of drug treatment may drive a wedge between prospective dealers and their customers by encouraging users to turn on their dealers. Therefore, liability for those costs, even to the user, is imposed under this Act as long as the user identifies and brings suit against his or her own dealers.

k. Allowing dealers who face a civil judgment for their illegal drug marketing to bring suit against their own sources for contribution may also drive a wedge into the relationships among some participants in the illegal drug distribution network.

l. While not all persons who have suffered losses as a result of the marketing of illegal drugs will pursue an action for damages, at least some individuals, guardians of drug babies, government agencies that provide treatment, insurance companies, and employers will find such an action worthwhile. These persons deserve the opportunity to recover their losses. Some new entrants to retail illegal drug dealing are likely to be deterred even if only a few of these suits are actually brought.

Section 4. Definitions.

As used in this Act:

- a. "Illegal drug" means a drug whose distribution is a violation of state law.
- b. "Illegal drug market" means the support system of illegal drug related operations, from production to retail sales, through which an illegal drug reaches the user.
- c. "Illegal drug market target community" is the area described under Section 9.
- d. "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this Act.
- e. "Level 1 offense" means possession of 1/4 ounce or more, but less than four ounces, or distribution of less than one ounce of a specified illegal drug or possession of one pound or 25 plants or more, but less than four pounds or 50 plants, or distribution of less than one pound of marijuana.
- f. "Level 2 offense" means possession of four ounces or more, but less than eight ounces, or distribution of one ounce or more, but less than two ounces, of a specified illegal drug or possession of four pounds or more or 50 plants or more, but less than eight pounds or 75 plants, or distribution of more than one pound, but less than five pounds, of marijuana.
- g. "Level 3 offense" means possession of eight ounces or more, but less than 16 ounces, or distribution of two ounces or more, but less than four ounces, of a specified illegal drug or possession of eight pounds or more or 75 plants or more, but less than 16 pounds or 100 plants, or distribution of more than 5 pounds, but less than 10 pounds, of marijuana.
- h. "Level 4 offense" means possession of 16 ounces or more or distribution of four ounces or more of a specified illegal drug or possession of 16 pounds or more or 100 plants or more or distribution of 10 pounds or more of marijuana.
- i. "Participate in the illegal drug market" means to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. "Participate in the illegal drug market" does not include the purchase or receipt of an illegal drug for personal use only.
- j. "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or foreign country.
- k. "Period of illegal drug use" means, in relation to the individual drug user, the time of the individual's first use of an illegal drug to the accrual of the cause of action. The period of illegal drug use is presumed to commence 2 years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence.
- l. "Place of illegal drug activity" means, in relation to the individual drug user, each state house legislative district in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the individual's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence.
- m. "Place of participation" means, in relation to a defendant in an action brought under this Act, each state house legislative district in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market.
- n. "Specified illegal drug" means cocaine, heroin, or methamphetamine and any other drug the distribution of which is a violation of state law.

Section 5. Liability for Participation in the Illegal Drug Market.

- a. A person who knowingly participates in the illegal drug market within this state is liable for civil damages as provided in this Act. A person may recover damages under this Act for injury resulting from an individual's use of an illegal drug.
- b. A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the illegal drug market, if the participation is in furtherance of an official investigation.

Section 6. Recovery of Damages.

- a. One or more of the following persons may bring an action for damages caused by an individual's use of an illegal drug:
- (1) A parent, legal guardian, child, spouse, or sibling of the individual drug user;
 - (2) An individual who was exposed to an illegal drug in utero;

(3) An employer of the individual drug user;

(4) A medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user;

(5) A person injured as a result of the willful, reckless, or negligent actions of an individual drug user.

b. A person entitled to bring an action under this section may seek damages from one or more of the following:

(1) A person who knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug that was actually used by the individual drug user.

(2) A person who knowingly participated in the illegal drug market if:

(a) The place of illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant; and,

(b) The defendant's participation in the illegal drug market was connected with the same type of illegal drug used by the individual drug user; and,

(c) The defendant participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.

c. A person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the illegal drug use;

(2) Non-economic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other non-pecuniary losses proximately caused by an individual's use of an illegal drug;

(3) Exemplary damages;

(4) Reasonable attorney fees;

(5) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

Section 7. Limited Recovery of Damages.

a. An individual drug user shall not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this subsection. An individual drug user may bring an action for damages caused by the use of an illegal drug only if all of the following conditions are met:

(1) The individual personally discloses to narcotics enforcement authorities, more than six months before filing the action, all of the information known to the individual regarding all that individual's sources of illegal drugs;

(2) The individual has not used an illegal drug within the six months before filing the action;

(3) The individual continues to remain free of the use of an illegal drug throughout the pendency of the action.

b. A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, an illegal drug that was actually used by the individual drug user.

c. A person entitled to bring an action under this section may recover only the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's illegal drug use;

(2) Reasonable attorney fees;

(3) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

Section 8. Third Party Cases.

A third party shall not pay damages awarded under this Act, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

Section 9. Illegal Drug Market Target Community.

A person whose participation in the illegal drug market constitutes the following level offense shall be considered to have the following level offense shall be considered to have the following illegal drug market target community:

- a. For a level 1 offense, the state house legislative district in which the defendant's place of participation is situated;
- b. For a level 2 offense, the target community described in subdivision (1) plus all state house legislative districts with a border contiguous to that target community;
- c. For a level 3 offense, the target community described in subdivision (2) plus all state house legislative districts with a border contiguous to that target community;
- d. For a level 4 offense, the state.

Section 10. Joinder of Parties.

- a. Two or more persons may join in one action under this Act as plaintiffs if their respective actions have at least one place of illegal drug activity in common and if any portion of the period of illegal drug use overlaps with the period of illegal drug use for every other plaintiff.
- b. Two or more persons may be joined in one action under this Act as defendants if those persons are liable to at least one plaintiff.
- c. A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

Section 11. Comparative Responsibility.

- a. An action by an individual drug user is governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff.
- b. The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.
- c. Comparative responsibility shall not be attributed to a plaintiff who is not an individual drug user.

Section 12. Contribution Among and Recovery from Multiple Defendants.

A person subject to liability under this Act has a right of action for contribution against another person subject to liability under this Act. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this Act and existing law against a person whom a defendant has asserted a right of contribution.

Section 13. Standard of Proof: effect of Criminal Drug Conviction.

- a. Proof of participation in the illegal drug market in an action brought under this Act shall be shown by clear and convincing evidence. Except as otherwise provided in this Act, other elements of the cause of action shall be shown by a preponderance of the evidence.
- b. A person against whom recovery is sought who has a criminal conviction pursuant to state drug laws or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, 84 Stat. 1236, codified at 21 U.S.C. ' 801 et seq., is estopped from denying participation in the illegal drug market. Such a conviction is also prima facie evidence of the person's participation in the illegal drug market during the two years preceding the date of an act giving rise to a conviction.
- c. The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person.

Section 14. Prejudgment Attachment and Execution on Judgments.

a. A plaintiff under this Act, subject to section 14(C), may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.

b. A person against whom a judgment has been rendered under this Act is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment.

c. Any assets sought to satisfy a judgment under this Act that are named in a forfeiture action or have been seized for forfeiture by any state or federal agency may not be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

Section 15. State of Limitations.

a. Except as otherwise provided in this section, a claim under this Act shall not be brought more than two years after the cause of action accrues. A cause of action accrues under this Act when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm.

b. For a plaintiff, the statute of limitations under this section is tolled while the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery under this Act or as otherwise provided by law. For a defendant, the statute of limitations under this section is tolled until six months after the individual potential defendant is convicted of a criminal drug offense or as otherwise provided by law.

c. The statute of limitations under this Act for a claim based on participation in the illegal drug market that occurred prior to the effective date of this Act does not begin to run until the effective date of this Act.

Section 16. Representation of Governmental Entities: Stay of Action.

a. A prosecuting attorney may represent the state or a political subdivision of the state in an action brought under this Act.

b. On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this Act shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

Section 17. Effect on Existing Laws.

The provisions of this Act are not intended to alter the law regarding intra-family tort immunity.

Section 18. Severability Clause.

If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to any other person or circumstance shall not be affected by that invalidation.

Section 19. Repealer Clause.**Section 20. Effective Date.**

//////////--[End of text of DDLA]--//////////

Contact us through the following form (make sure when finished to scroll down and click on "**Submit**") if we can answer questions and provide you with a better understanding of the Model Act and how its provisions work in practice.

Your State:

What information can we provide or question can we answer? Please respond below:

Other information can be obtained from:

Your Name:

Your E-mail address:

Please give your telephone number(s):

Time Zone:

Check which applies: ☐ Legislator ☐ Legislative Staff
☐ Concerned Citizen

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REVISED: AUGUST 21, 2001 .

2001 BILL

AA to

ASA 1 to

2007 SB 40

- 1 AN ACT *to create* 893.575, 895.90, 895.91, 895.92, 895.93, 895.94 and 895.95 of
- 2 the statutes; **relating to:** the liability of a person who is involved in the
- 3 distribution, possession or sale of illegal drugs.

Analysis by the Legislative Reference Bureau

This bill creates a civil cause of action for damages resulting from injuries caused by an individual's use of an illegal drug. Under the bill, a parent, legal guardian, child, spouse, sibling, or employer of the illegal drug user, medical facility, government agency, individual exposed to the illegal drug in utero, or person injured as the result of the willful, reckless, or negligent action of the illegal drug user, may bring an action for damages. The bill allows recovery of economic damages, including the cost of treatment, rehabilitation, loss of productivity and medical expenses, noneconomic damages, exemplary damages, reasonable attorney fees, and the costs of bringing the action.

The bill also allows the illegal drug user to bring an action for damages caused by the use of an illegal drug if he or she discloses to law enforcement authorities the information about his or her sources of illegal drugs, has not used illegal drugs for six months before filing the action, and continues to remain free of illegal drug use throughout the pendency of the action. The bill limits the persons whom the individual illegal drug user may sue to persons who distributed, or who were in the chain of distribution of, an illegal drug used by that individual. The bill limits that individual's recovery to economic damages, reasonable attorney fees, and the costs of bringing the action.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBb0767/PA
RPN:y:nnw

WLJ ABIA

LFB:.....Carmichael - Drug dealer liability

~~FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION~~

**ASSEMBLY AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 40**

1 At the locations indicated, amend the substitute amendment as follows:

2 ~~Section 1. Title.~~

3 ~~This Act may be cited as the Drug Dealer Liability Act.~~

4 ~~Section 2. Purpose.~~

5 ~~The purpose of this Act is to provide a civil remedy for damages to persons in~~
6 ~~a community injured as a result of illegal drug use. These persons include parents,~~
7 ~~employers, insurers, governmental entities, and others who pay for drug treatment~~
8 ~~or employee assistance programs, as well as infants injured as a result of exposure~~
9 ~~to drugs in utero ("drug babies"). The Act will enable them to recover damages from~~
10 ~~those persons in the community who have joined the illegal drug market. A further~~

Delete all from here to
(end) of 60767 & replace with ✓

BILL

01-02

The bill allows the action to be brought against a person who knowingly participated in the distribution of the illegal drug. Under the bill, a person knowingly participated in the distribution of the illegal drug if that person participated in the same illegal drug market as the illegal drug user, that participation was connected with the same type of illegal drug, and that participation was during the same period of time as the person's illegal drug use. The bill allows the joining of more than one plaintiff in the lawsuit for damages if they have at least one place of illegal drug use in common and if some part of the period of the illegal drug use related to each plaintiff's damages is the same for all of the plaintiffs. Defendants may also be joined in one action under the bill if all of those defendants are liable to at least one plaintiff.

The bill requires the plaintiff to prove by clear and convincing evidence that the defendant participated in the illegal drug market and to prove all other elements of the action by a preponderance of the evidence. Criminal conviction of a drug violation is evidence of a person's participation in the illegal drug market during the two years preceding the violation. The bill allows a plaintiff to ask the court to issue an attachment order before the defendant is notified of the request for the order. That order prevents the defendant from disposing of the attached assets. The defendant may, under the bill, receive an immediate court hearing after the order is issued and the court may lift the attachment order if the defendant shows that the assets will be available for a potential award or if the defendant posts a sufficient bond. Under the bill, a person against whom a judgment is rendered may not exempt any property from levy or execution to pay the judgment.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

15337 line 40 after that line insert
33948
1 **SECTION 1.** 893.575 of the statutes is created to read:

2 **893.575 Actions concerning illegal drug use.** (1) Except as otherwise
3 provided in this section, an action under s. 895.92 shall be commenced within 2 years
4 after the cause of action accrues or be barred. A cause of action under s. 895.92
5 accrues when a person who may recover has reason to know of the harm from illegal
6 drug use that is the basis for the cause of action and has reason to know that the
7 illegal drug use is the cause of the harm.

8 (2) For a plaintiff, the time limit under this section is tolled while the individual
9 potential plaintiff is incapacitated by the use of an illegal drug to the extent that the
10 individual cannot reasonably be expected to seek recovery under s. 895.92. For a

BILL

3775 m

defendant, the time limit under this section is tolled until 6 months after the individual potential defendant is convicted of a criminal drug offense.

(3) The time limit under this section for an action under s. 895.92 based on participation in the illegal drug market that occurred prior to the effective date of this subsection [revisor inserts date], does not begin to run until the effective date of this subsection [revisor inserts date].

SECTION 2. 895.90 of the statutes is created to read:

895.90 Short title. Sections 895.90 to 895.96 shall be known as the "Drug Dealer Liability Law."

SECTION 3. 895.91 of the statutes is created to read:

895.91 Definitions. In ss. 895.90 to 895.96:

(1) "Illegal drug" means a controlled substance or controlled substance analog whose distribution is a violation of s. 961.41.

(2) "Illegal drug market" means the support system of illegal drug related operations, from production to retail sales, through which an illegal drug reaches the user.

(3) "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under s. 895.92.

(4) "Level 1 offense" means possession of 7 grams or more, but less than 113 grams, or distribution of less than 28 grams of a specified illegal drug other than marijuana, or possession of 454 grams or more, but less than 1.8 kilograms, of marijuana, or possession of 25 plants or more, but less than 50 plants, containing tetrahydrocannabinols, or distribution of less than 454 grams of marijuana.

(5) "Level 2 offense" means possession of 113 grams or more, but less than 227 grams, or distribution of 28 grams or more, but less than 56 grams, of a specified

BILL**SECTION 3**

1 illegal drug other than marijuana, or possession of 1.8 kilograms or more, but less
2 than 3.6 kilograms of marijuana, or possession of 50 plants or more, but less than 75
3 plants, containing tetrahydrocannabinols, or distribution of more than 454 grams,
4 but less than 2.3 kilograms, of marijuana.

5 (6) "Level 3 offense" means possession of 227 grams or more, but less than 454
6 grams, or distribution of 56 grams or more, but less than 113 grams, of a specified
7 illegal drug other than marijuana, or possession of 3.6 kilograms or more, but less
8 than 7.3 kilograms of marijuana, or possession of 75 plants or more, but less than 100
9 plants, containing tetrahydrocannabinols, or distribution of more than 2.3
10 kilograms, but less than 4.5 kilograms, of marijuana.

11 (7) "Level 4 offense" means possession of 454 grams or more or distribution of
12 113 grams or more of a specified illegal drug other than marijuana, or possession of
13 7.3 kilograms or more of marijuana, or possession of 100 plants or more containing
14 tetrahydrocannabinols, or distribution of 4.5 kilograms or more of marijuana.

15 (8) "Marijuana" has the meaning given in s. 961.01 (14).

16 (9) "Participate in the illegal drug market" means to distribute, possess with
17 an intent to distribute, commit an act intended to facilitate the marketing or
18 distribution of, or agree to distribute, possess with an intent to distribute, or commit
19 an act intended to facilitate the marketing and distribution of an illegal drug.
20 "Participate in the illegal drug market" does not include the purchase or receipt of
21 an illegal drug for personal use only.

22 (10) "Period of illegal drug use" means, in relation to the individual drug user,
23 the time of the individual's first use of an illegal drug to the accrual of the cause of
24 action under s. 895.92. The period of illegal drug use is presumed to commence 2

BILL

1 years before the cause of action accrues unless the defendant proves otherwise by
2 clear and convincing evidence.

3 (11) "Place of illegal drug activity" means, in relation to the individual drug
4 user and unless the defendant proves otherwise by clear and convincing evidence,
5 each assembly district in which a claim is made that the individual possesses or uses
6 an illegal drug or in which the individual resides, attends school, or is employed
7 during the period of the individual's illegal drug use.

8 (12) "Place of participation" means, in relation to a defendant in an action
9 brought under s. 895.92, each assembly district in which the person participates in
10 the illegal drug market or in which the person resides, attends school, or is employed
11 during the period of the person's participation in the illegal drug market.

12 SECTION 4. 895.92 of the statutes is created to read:

13 **895.92 Liability for participation in the illegal drug market. (1) A**

14 person who knowingly participates in the illegal drug market within this state is
15 liable for civil damages as provided in this section. A person may recover damages
16 under this section for injury resulting from an individual's use of an illegal drug.

17 (2) A law enforcement officer or agency, the state, or a person acting at the
18 direction of a law enforcement officer or agency or the state, is not liable for
19 participating in the illegal drug market, if the participation is in furtherance of an
20 official investigation.

21 (3) One or more of the following persons may bring an action for damages
22 caused by an individual's use of an illegal drug:

23 (a) A parent, legal guardian, child, spouse, or sibling of the individual drug
24 user.

25 (b) An individual who was exposed to an illegal drug in utero.

BILL**SECTION 4**

1 (c) An employer of the individual drug user.

2 (d) A medical facility, insurer, governmental agency, employer, or other entity
3 that funds a drug treatment program or employee assistance program for the
4 individual drug user or that otherwise expended money on behalf of the individual
5 drug user.

6 (e) A person injured as a result of the willful, reckless, or negligent actions of
7 an individual drug user.

8 **(4)** A person entitled to bring an action under this section may seek damages
9 from one or more of the following:

10 (a) A person who knowingly distributed, or knowingly participated in the chain
11 of distribution of, an illegal drug that was used by the individual drug user.

12 (b) A person who knowingly participated in the illegal drug market if all of the
13 following apply:

14 1. The place of illegal drug activity by the individual drug user is within the
15 illegal drug market target community of the person under s. 895.93 (2). ✓

16 2. The person's participation in the illegal drug market was connected with the
17 same type of illegal drug used by the individual drug user.

18 3. The person participated in the illegal drug market at any time during the
19 individual drug user's period of illegal drug use.

20 **(5)** A person entitled to bring an action under this section may recover all of
21 the following:

22 (a) Economic damages, including the cost of treatment and rehabilitation,
23 medical expenses, loss of economic or educational potential, loss of productivity,
24 absenteeism, support expenses, accidents or injury, and any other pecuniary loss
25 proximately caused by the illegal drug use.

BILL

1 (b) Noneconomic damages, including physical and emotional pain, suffering,
2 physical impairment, emotional distress, mental anguish, disfigurement, loss of
3 enjoyment, loss of companionship, services, and consortium, and other nonpecuniary
4 losses proximately caused by an individual's use of an illegal drug.

5 (c) Exemplary damages.

6 (d) Reasonable attorney fees.

7 (e) Costs of the suit, including reasonable expenses for expert testimony.

8 **(6)** (a) An individual drug user may not bring an action for damages under this
9 section caused by the use of an illegal drug, except as provided in this subsection.
10 An individual drug user may bring an action for damages caused by the use of an
11 illegal drug only if all of the following conditions are met:

12 1. The individual personally discloses to law enforcement authorities, more
13 than 6 months before filing the action, all of the information known to the individual
14 regarding ^{of} ~~all~~ that individual's sources of illegal drugs.

15 2. The individual has not used an illegal drug within the 6 months before filing
16 the action.

17 3. The individual continues to remain free of the use of an illegal drug
18 throughout the pendency of the action.

19 (b) A person entitled to bring an action under this subsection may seek
20 damages only from a person who distributed, or is in the chain of distribution of, an
21 illegal drug that was actually used by the individual drug user.

22 (c) A person entitled to bring an action under this subsection may recover only
23 the following damages:

24 1. Economic damages, including, but not limited to, the cost of treatment,
25 rehabilitation, and medical expenses, loss of economic or educational potential, loss

BILL**SECTION 4**

1 of productivity, absenteeism, accidents or injury, and any other pecuniary loss
2 proximately caused by the person's illegal drug use.

3 2. Reasonable attorney fees.

4 3. Costs of the suit, including reasonable expenses for expert testimony.

5 ~~SECTION 5. 895.93~~ of the statutes is created to read:

6 **895.93 Third party cases and target communities.** (1) A 3rd party may
7 not pay damages awarded under s. 895.92, or provide a defense or money for a
8 defense, on behalf of an insured under a contract of insurance or indemnification.

9 (2) A person whose participation in the illegal drug market constitutes the
10 following level of offense shall be considered to have the following illegal drug market
11 target community:

12 (a) For a level 1 offense, all assembly districts that comprise the person's place
13 of participation.

14 (b) For a level 2 offense, the target community described in par. (a) plus all
15 assembly districts with a border contiguous to that target community.

16 (c) For a level 3 offense, the target community described in par. (b) plus all
17 assembly districts with a border contiguous to that target community.

18 (d) For a level 4 offense, the state.

19 ~~SECTION 6. 895.94~~ of the statutes is created to read:

20 **895.94 Joinder, responsibility, contribution, and standard of proof. (1)**

21 JOINDER OF PARTIES. (a) Two or more persons may join in one action under s. 895.92
22 as plaintiffs if their respective actions have at least one place of illegal drug activity
23 in common and if any portion of the period of illegal drug use related to one plaintiff's
24 damages overlaps with the period of illegal drug use related to every other plaintiff's
25 damages.

BILL

(1) (b) Two or more persons may be joined in one action under s. 895.92¹⁰ as defendants if those persons are liable to at least one plaintiff.

3 (c) A plaintiff need not be interested in obtaining and a defendant need not be
4 interested in defending against all the relief demanded. Judgment may be given for
5 one or more plaintiffs according to their respective rights to relief and against one
6 or more defendants according to their respective liabilities.

7 (2) COMPARATIVE RESPONSIBILITY. (a) Section 895.045 applies to an action under
8 s. 895.92¹⁰

9 (b) The burden of proving the comparative negligence of the plaintiff is on the
10 defendant, which shall be shown by clear and convincing evidence.

11 (c) Comparative negligence may not be attributed to a plaintiff who is not an
12 individual drug user.

13 (3) CONTRIBUTION AMONG AND RECOVERY FROM MULTIPLE DEFENDANTS. A person
14 subject to liability under s. 895.92¹⁰ has a right of action for contribution against
15 another person subject to liability under that section. Contribution may be enforced
16 either in the original action or by a separate action brought for that purpose. A
17 plaintiff may seek recovery in accordance with s. 895.92¹⁰ and existing law against a
18 person whom a defendant has asserted a right of contribution.

19 (4) STANDARD OF PROOF: EFFECT OF CRIMINAL DRUG CONVICTION. (a) Proof of
20 participation in the illegal drug market in an action brought under s. 895.92¹⁰ shall
21 be shown by clear and convincing evidence. Except as otherwise provided in ss.
22 895.09, 895.10, 895.11, and 895.13, ^{this section and} other elements of the cause of action shall be shown by a
23 preponderance of the evidence.

24 (b) A person against whom recovery is sought who has a criminal conviction
25 under ch. 961 or the Comprehensive Drug Abuse Prevention and Control Act of 1970,

BILL

21 USC 801 to 971, is estopped from denying participation in the illegal drug market. Such a conviction is also prima facie evidence of the person's participation in the illegal drug market during the 2 years preceding the date of an act giving rise to a conviction.

(c) The absence of a criminal conviction described under par. (b) of a person against whom recovery is sought does not bar an action against that person.

SECTION 7. 895.95 of the statutes is created to read:

895:95 Attachment, execution, and stay. (1) Except as provided in sub. (3),

a plaintiff under s. 895.92 may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate court hearing. The court may lift the attachment if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.

(2) A person against whom a judgment has been rendered under s. 895.92 is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment.

(3) Any assets sought to satisfy a judgment in an action under s. 895.92 that are named in a forfeiture action or that have been seized for forfeiture by any state or federal agency may not be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

(4) The district attorney may represent the state or a political subdivision of the state in an action brought under s. 895.92.

SECTION 7

(END)

5



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBb0767/1 ✓

RPN:wlj:rs

✓
stays

LFB:.....Carmichael - Drug dealer liability

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2007 SENATE BILL 40

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1533, line 4: after that line insert:

3 **"SECTION 3374q.** 893.575 of the statutes is created to read:

4 **893.575 Actions concerning illegal drug use.** (1) Except as otherwise
5 provided in this section, an action under s. 895.10 shall be commenced within 2 years
6 after the cause of action accrues or be barred. A cause of action under s. 895.10
7 accrues when a person who may recover has reason to know of the harm from illegal
8 drug use that is the basis for the cause of action and has reason to know the illegal
9 drug use is the cause of the harm.

1 (2) For a plaintiff, the time limit under this section is tolled while the individual
2 potential plaintiff is incapacitated by the use of an illegal drug to the extent the
3 individual cannot reasonably be expected to seek recovery under s. 895.10. For a
4 defendant, the time limit under this section is tolled until 6 months after the
5 individual potential defendant is convicted of a criminal drug offense.

6 (3) The time limit under this section for an action under s. 895.10 based on
7 participation in the illegal drug market that occurred prior to the effective date of
8 this subsection [revisor inserts date], does not begin to run until the effective date
9 of this subsection [revisor inserts date].”.

10 **2.** Page 1533, line 7: after that line insert:

11 “**SECTION 3775m.** 895.08 of the statutes is created to read:

12 **895.08 Short title.** This section and ss. 895.09 to 895.13 shall be known as the
13 “Drug Dealer Liability Law.”

14 **SECTION 3775n.** 895.09 of the statutes is created to read:

15 **895.09 Definitions.** In ss. 895.08 to 895.13:

16 (1) “Illegal drug” means a controlled substance or controlled substance analog
17 whose distribution is a violation of s. 961.41.

18 (2) “Illegal drug market” means the support system of illegal drug-related
19 operations, from production to retail sales, through which an illegal drug reaches the
20 user.

21 (3) “Individual drug user” means the individual whose illegal drug use is the
22 basis of an action brought under s. 895.10.

23 (4) “Level 1 offense” means possession of 7 grams or more, but less than 113
24 grams, or distribution of less than 28 grams of a specified illegal drug other than

1 marijuana, or possession of 454 grams or more, but less than 1.8 kilograms, of
2 marijuana, or possession of 25 plants or more, but less than 50 plants, containing
3 tetrahydrocannabinols, or distribution of less than 454 grams of marijuana.

4 (5) "Level 2 offense" means possession of 113 grams or more, but less than 227
5 grams, or distribution of 28 grams or more, but less than 56 grams, of a specified
6 illegal drug other than marijuana, or possession of 1.8 kilograms or more, but less
7 than 3.6 kilograms of marijuana, or possession of 50 plants or more, but less than 75
8 plants, containing tetrahydrocannabinols, or distribution of more than 454 grams,
9 but less than 2.3 kilograms, of marijuana.

10 (6) "Level 3 offense" means possession of 227 grams or more, but less than 454
11 grams, or distribution of 56 grams or more, but less than 113 grams, of a specified
12 illegal drug other than marijuana, or possession of 3.6 kilograms or more, but less
13 than 7.3 kilograms of marijuana, or possession of 75 plants or more, but less than 100
14 plants, containing tetrahydrocannabinols, or distribution of more than 2.3
15 kilograms, but less than 4.5 kilograms, of marijuana.

16 (7) "Level 4 offense" means possession of 454 grams or more or distribution of
17 113 grams or more of a specified illegal drug other than marijuana, or possession of
18 7.3 kilograms or more of marijuana, or possession of 100 plants or more containing
19 tetrahydrocannabinols, or distribution of 4.5 kilograms or more of marijuana.

20 (8) "Marijuana" has the meaning given in s. 961.01 (14).

21 (9) "Participate in the illegal drug market" means to distribute, possess with
22 an intent to distribute, commit an act intended to facilitate the marketing or
23 distribution of, or agree to distribute, possess with an intent to distribute, or commit
24 an act intended to facilitate the marketing and distribution of an illegal drug.

1 “Participate in the illegal drug market” does not include the purchase or receipt of
2 an illegal drug for personal use only.

3 (10) “Period of illegal drug use” means, in relation to the individual drug user,
4 the time of the individual’s first use of an illegal drug to the accrual of the cause of
5 action under s. 895.10. The period of illegal drug use is presumed to commence 2
6 years before the cause of action accrues unless the defendant proves otherwise by
7 clear and convincing evidence.

8 (11) “Place of illegal drug activity” means, in relation to the individual drug
9 user and unless the defendant proves otherwise by clear and convincing evidence,
10 each assembly district in which a claim is made that the individual possesses or uses
11 an illegal drug or in which the individual resides, attends school, or is employed
12 during the period of the individual’s illegal drug use.

13 (12) “Place of participation” means, in relation to a defendant in an action
14 brought under s. 895.10, each assembly district in which the person participates in
15 the illegal drug market or in which the person resides, attends school, or is employed
16 during the period of the person’s participation in the illegal drug market.

17 **SECTION 3775p.** 895.10 of the statutes is created to read:

18 **895.10 Liability for participation in the illegal drug market.** (1) A
19 person who knowingly participates in the illegal drug market within this state is
20 liable for civil damages as provided in this section. A person may recover damages
21 under this section for injury resulting from an individual’s use of an illegal drug.

22 (2) A law enforcement officer or agency, the state, or a person acting at the
23 direction of a law enforcement officer or agency or the state, is not liable for
24 participating in the illegal drug market, if the participation is in furtherance of an
25 official investigation.

1 (3) One or more of the following persons may bring an action for damages
2 caused by an individual's use of an illegal drug:

3 (a) A parent, legal guardian, child, spouse, or sibling of the individual drug
4 user.

5 (b) An individual who was exposed to an illegal drug in utero.

6 (c) An employer of the individual drug user.

7 (d) A medical facility, insurer, governmental agency, employer, or other entity
8 that funds a drug treatment program or employee assistance program for the
9 individual drug user or that otherwise expended money on behalf of the individual
10 drug user.

11 (e) A person injured as a result of the willful, reckless, or negligent actions of
12 an individual drug user.

13 (4) A person entitled to bring an action under this section may seek damages
14 from ~~one or more of the following~~. ^{NO 9}

15 ^{MOVE} (a) A person who knowingly distributed, or knowingly participated in the chain
16 of distribution of, an illegal drug that was used by the individual drug user.

17 (b) A person who knowingly participated in the illegal drug market if all of the
18 following apply:

19 1. The place of illegal drug activity by the individual drug user is within the
20 illegal drug market target community of the person under s. 895.11 (2).

21 2. The person's participation in the illegal drug market was connected with the
22 same type of illegal drug used by the individual drug user.

23 3. The person participated in the illegal drug market at any time during the
24 individual drug user's period of illegal drug use.

1 (5) A person entitled to bring an action under this section may recover all of
2 the following:

3 (a) Economic damages, including the cost of treatment and rehabilitation,
4 medical expenses, loss of economic or educational potential, loss of productivity,
5 absenteeism, support expenses, accidents or injury, and any other pecuniary loss
6 proximately caused by the illegal drug use.

7 (b) Noneconomic damages, including physical and emotional pain, suffering,
8 physical impairment, emotional distress, mental anguish, disfigurement, loss of
9 enjoyment, loss of companionship, services, and consortium, and other nonpecuniary
10 losses proximately caused by an individual's use of an illegal drug.

11 (c) Exemplary damages.

12 (d) Reasonable attorney fees.

13 (e) Costs of the suit, including reasonable expenses for expert testimony.

14 (6) (a) An individual drug user may not bring an action for damages under this
15 section caused by the use of an illegal drug, except as provided in this subsection.
16 An individual drug user may bring an action for damages caused by the use of an
17 illegal drug only if all of the following conditions are met:

18 1. The individual personally discloses to law enforcement authorities, more
19 than 6 months before filing the action, all of the information known to the individual
20 regarding all of that individual's sources of illegal drugs.

21 2. The individual has not used an illegal drug within the 6 months before filing
22 the action.

23 3. The individual continues to remain free of the use of an illegal drug
24 throughout the pendency of the action.

1 (b) A person entitled to bring an action under this subsection may seek
2 damages only from a person who distributed, or is in the chain of distribution of, an
3 illegal drug that was actually used by the individual drug user.

4 (c) A person entitled to bring an action under this subsection may recover only
5 the following damages:

6 1. Economic damages, including, but not limited to, the cost of treatment,
7 rehabilitation, and medical expenses, loss of economic or educational potential, loss
8 of productivity, absenteeism, accidents or injury, and any other pecuniary loss
9 proximately caused by the person's illegal drug use.

10 2. Reasonable attorney fees.

11 3. Costs of the suit, including reasonable expenses for expert testimony.

12 **SECTION 3775q.** 895.11 of the statutes is created to read:

13 **895.11 Third-party cases and target communities.** (1) A 3rd party may
14 not pay damages awarded under s. 895.10, or provide a defense or money for a
15 defense, on behalf of an insured under a contract of insurance or indemnification.

16 (2) A person whose participation in the illegal drug market constitutes the
17 following level of offense shall be considered to have the following illegal drug market
18 target community:

19 (a) For a level 1 offense, all assembly districts that comprise the person's place
20 of participation.

21 (b) For a level 2 offense, the target community described in par. (a) plus all
22 assembly districts with a border contiguous to that target community.

23 (c) For a level 3 offense, the target community described in par. (b) plus all
24 assembly districts with a border contiguous to that target community.

25 (d) For a level 4 offense, the state.

1 **SECTION 3775r.** 895.12 of the statutes is created to read:

2 **895.12 Joinder, responsibility, contribution, and standard of proof. (1)**

3 JOINDER OF PARTIES. (a) Two or more persons may join in one action under s. 895.10
4 as plaintiffs if their respective actions have at least one place of illegal drug activity
5 in common and if any portion of the period of illegal drug use related to one plaintiff's
6 damages overlaps with the period of illegal drug use related to every other plaintiff's
7 damages.

8 (b) Two or more persons may be joined in one action under s. 895.10 as
9 defendants if those persons are liable to at least one plaintiff.

10 (c) A plaintiff need not be interested in obtaining and a defendant need not be
11 interested in defending against all the relief demanded. Judgment may be given for
12 one or more plaintiffs according to their respective rights to relief and against one
13 or more defendants according to their respective liabilities.

14 **(2) COMPARATIVE RESPONSIBILITY.** (a) Section 895.045 applies to an action under
15 s. 895.10.

16 (b) The burden of proving the comparative negligence of the plaintiff is on the
17 defendant, which shall be shown by clear and convincing evidence.

18 (c) Comparative negligence may not be attributed to a plaintiff who is not an
19 individual drug user.

20 **(3) CONTRIBUTION AMONG AND RECOVERY FROM MULTIPLE DEFENDANTS.** A person
21 subject to liability under s. 895.10 has a right of action for contribution against
22 another person subject to liability under that section. Contribution may be enforced
23 either in the original action or by a separate action brought for that purpose. A
24 plaintiff may seek recovery in accordance with s. 895.10 and existing law against a
25 person whom a defendant has asserted a right of contribution.

1 (4) STANDARD OF PROOF: EFFECT OF CRIMINAL DRUG CONVICTION. (a) Proof of
2 participation in the illegal drug market in an action brought under s. 895.10 shall
3 be shown by clear and convincing evidence. Except as otherwise provided in this
4 section and ss. 895.09, 895.10, 895.11, and 895.13, other elements of the cause of
5 action shall be shown by a preponderance of the evidence.

6 (b) A person against whom recovery is sought who has a criminal conviction
7 under ch. 961 or 21 USC 801 to 971, is estopped from denying participation in the
8 illegal drug market. Such a conviction is also prima facie evidence of the person's
9 participation in the illegal drug market during the 2 years preceding the date of an
10 act giving rise to a conviction.

11 (c) The absence of a criminal conviction described under par. (b) of a person
12 against whom recovery is sought does not bar an action against that person.

13 **SECTION 3775s.** 895.13 of the statutes is created to read:

14 **895.13 Attachment, execution, and stay.** (1) Except as provided in sub. (3),
15 a plaintiff under s. 895.10 may request an ex parte prejudgment attachment order
16 from the court against all assets of a defendant sufficient to satisfy a potential award.
17 If attachment is instituted, a defendant is entitled to an immediate court hearing.
18 The court may lift the attachment if the defendant demonstrates that the assets will
19 be available for a potential award or if the defendant posts a bond sufficient to cover
20 a potential award.

21 (2) A person against whom a judgment has been rendered under s. 895.10 is
22 not eligible to exempt any property, of whatever kind, from process to levy or process
23 to execute on the judgment.

24 (3) Any assets sought to satisfy a judgment in an action under s. 895.10 that
25 are named in a forfeiture action or that have been seized for forfeiture by any state

1 or federal agency may not be used to satisfy a judgment unless and until the assets
2 have been released following the conclusion of the forfeiture action or released by the
3 agency that seized the assets.

4 (4) The district attorney may represent the state or a political subdivision of
5 the state in an action brought under s. 895.10.

6 (5) On motion by a governmental agency involved in a drug investigation or
7 prosecution, an action brought under s. 895.10 shall be stayed until the completion
8 of the criminal investigation or prosecution that gave rise to the motion for a stay of
9 the action.”.

10 (END)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBb0767/2
RPN:wlj:wnw

LFB:.....Carmichael - Drug dealer liability

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 40**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1533, line 4: after that line insert:

3 **"SECTION 3374q.** 893.575 of the statutes is created to read:

4 **893.575 Actions concerning illegal drug use.** (1) Except as otherwise
5 provided in this section, an action under s. 895.10 shall be commenced within 2 years
6 after the cause of action accrues or be barred. A cause of action under s. 895.10
7 accrues when a person who may recover has reason to know of the harm from illegal
8 drug use that is the basis for the cause of action and has reason to know the illegal
9 drug use is the cause of the harm.

1 (2) For a plaintiff, the time limit under this section is tolled while the individual
2 potential plaintiff is incapacitated by the use of an illegal drug to the extent the
3 individual cannot reasonably be expected to seek recovery under s. 895.10. For a
4 defendant, the time limit under this section is tolled until 6 months after the
5 individual potential defendant is convicted of a criminal drug offense.

6 (3) The time limit under this section for an action under s. 895.10 based on
7 participation in the illegal drug market that occurred prior to the effective date of
8 this subsection [revisor inserts date], does not begin to run until the effective date
9 of this subsection [revisor inserts date].”.

10 **2.** Page 1533, line 7: after that line insert:

11 “**SECTION 3775m.** 895.08 of the statutes is created to read:

12 **895.08 Short title.** This section and ss. 895.09 to 895.13 shall be known as the
13 “Drug Dealer Liability Law.”

14 **SECTION 3775n.** 895.09 of the statutes is created to read:

15 **895.09 Definitions.** In ss. 895.08 to 895.13:

16 (1) “Illegal drug” means a controlled substance or controlled substance analog
17 whose distribution is a violation of s. 961.41.

18 (2) “Illegal drug market” means the support system of illegal drug-related
19 operations, from production to retail sales, through which an illegal drug reaches the
20 user.

21 (3) “Individual drug user” means the individual whose illegal drug use is the
22 basis of an action brought under s. 895.10.

23 (4) “Level 1 offense” means possession of 7 grams or more, but less than 113
24 grams, or distribution of less than 28 grams of a specified illegal drug other than

1 marijuana, or possession of 454 grams or more, but less than 1.8 kilograms, of
2 marijuana, or possession of 25 plants or more, but less than 50 plants, containing
3 tetrahydrocannabinols, or distribution of less than 454 grams of marijuana.

4 (5) "Level 2 offense" means possession of 113 grams or more, but less than 227
5 grams, or distribution of 28 grams or more, but less than 56 grams, of a specified
6 illegal drug other than marijuana, or possession of 1.8 kilograms or more, but less
7 than 3.6 kilograms of marijuana, or possession of 50 plants or more, but less than 75
8 plants, containing tetrahydrocannabinols, or distribution of more than 454 grams,
9 but less than 2.3 kilograms, of marijuana.

10 (6) "Level 3 offense" means possession of 227 grams or more, but less than 454
11 grams, or distribution of 56 grams or more, but less than 113 grams, of a specified
12 illegal drug other than marijuana, or possession of 3.6 kilograms or more, but less
13 than 7.3 kilograms of marijuana, or possession of 75 plants or more, but less than 100
14 plants, containing tetrahydrocannabinols, or distribution of more than 2.3
15 kilograms, but less than 4.5 kilograms, of marijuana.

16 (7) "Level 4 offense" means possession of 454 grams or more or distribution of
17 113 grams or more of a specified illegal drug other than marijuana, or possession of
18 7.3 kilograms or more of marijuana, or possession of 100 plants or more containing
19 tetrahydrocannabinols, or distribution of 4.5 kilograms or more of marijuana.

20 (8) "Marijuana" has the meaning given in s. 961.01 (14).

21 (9) "Participate in the illegal drug market" means to distribute, possess with
22 an intent to distribute, commit an act intended to facilitate the marketing or
23 distribution of, or agree to distribute, possess with an intent to distribute, or commit
24 an act intended to facilitate the marketing and distribution of an illegal drug.

1 "Participate in the illegal drug market" does not include the purchase or receipt of
2 an illegal drug for personal use only.

3 (10) "Period of illegal drug use" means, in relation to the individual drug user,
4 the time of the individual's first use of an illegal drug to the accrual of the cause of
5 action under s. 895.10. The period of illegal drug use is presumed to commence 2
6 years before the cause of action accrues unless the defendant proves otherwise by
7 clear and convincing evidence.

8 (11) "Place of illegal drug activity" means, in relation to the individual drug
9 user and unless the defendant proves otherwise by clear and convincing evidence,
10 each assembly district in which a claim is made that the individual possesses or uses
11 an illegal drug or in which the individual resides, attends school, or is employed
12 during the period of the individual's illegal drug use.

13 (12) "Place of participation" means, in relation to a defendant in an action
14 brought under s. 895.10, each assembly district in which the person participates in
15 the illegal drug market or in which the person resides, attends school, or is employed
16 during the period of the person's participation in the illegal drug market.

17 **SECTION 3775p.** 895.10 of the statutes is created to read:

18 **895.10 Liability for participation in the illegal drug market.** (1) A
19 person who knowingly participates in the illegal drug market within this state is
20 liable for civil damages as provided in this section. A person may recover damages
21 under this section for injury resulting from an individual's use of an illegal drug.

22 (2) A law enforcement officer or agency, the state, or a person acting at the
23 direction of a law enforcement officer or agency or the state, is not liable for
24 participating in the illegal drug market, if the participation is in furtherance of an
25 official investigation.

1 (3) One or more of the following persons may bring an action for damages
2 caused by an individual's use of an illegal drug:

3 (a) A parent, legal guardian, child, spouse, or sibling of the individual drug
4 user.

5 (b) An individual who was exposed to an illegal drug in utero.

6 (c) An employer of the individual drug user.

7 (d) A medical facility, insurer, governmental agency, employer, or other entity
8 that funds a drug treatment program or employee assistance program for the
9 individual drug user or that otherwise expended money on behalf of the individual
10 drug user.

11 (e) A person injured as a result of the willful, reckless, or negligent actions of
12 an individual drug user.

13 (4) A person entitled to bring an action under this section may seek damages
14 from a person who knowingly distributed, or knowingly participated in the chain of
15 distribution of, an illegal drug that was used by the individual drug user.

16 (5) A person entitled to bring an action under this section may recover all of
17 the following:

18 (a) Economic damages, including the cost of treatment and rehabilitation,
19 medical expenses, loss of economic or educational potential, loss of productivity,
20 absenteeism, support expenses, accidents or injury, and any other pecuniary loss
21 proximately caused by the illegal drug use.

22 (b) Noneconomic damages, including physical and emotional pain, suffering,
23 physical impairment, emotional distress, mental anguish, disfigurement, loss of
24 enjoyment, loss of companionship, services, and consortium, and other nonpecuniary
25 losses proximately caused by an individual's use of an illegal drug.

1 (c) Exemplary damages.

2 (d) Reasonable attorney fees.

3 (e) Costs of the suit, including reasonable expenses for expert testimony.

4 (6) (a) An individual drug user may not bring an action for damages under this
5 section caused by the use of an illegal drug, except as provided in this subsection.
6 An individual drug user may bring an action for damages caused by the use of an
7 illegal drug only if all of the following conditions are met:

8 1. The individual personally discloses to law enforcement authorities, more
9 than 6 months before filing the action, all of the information known to the individual
10 regarding all of that individual's sources of illegal drugs.

11 2. The individual has not used an illegal drug within the 6 months before filing
12 the action.

13 3. The individual continues to remain free of the use of an illegal drug
14 throughout the pendency of the action.

15 (b) A person entitled to bring an action under this subsection may seek
16 damages only from a person who distributed, or is in the chain of distribution of, an
17 illegal drug that was actually used by the individual drug user.

18 (c) A person entitled to bring an action under this subsection may recover only
19 the following damages:

20 1. Economic damages, including, but not limited to, the cost of treatment,
21 rehabilitation, and medical expenses, loss of economic or educational potential, loss
22 of productivity, absenteeism, accidents or injury, and any other pecuniary loss
23 proximately caused by the person's illegal drug use.

24 2. Reasonable attorney fees.

25 3. Costs of the suit, including reasonable expenses for expert testimony.

1 **SECTION 3775q.** 895.11 of the statutes is created to read:

2 **895.11 Third-party cases and target communities.** (1) A 3rd party may
3 not pay damages awarded under s. 895.10, or provide a defense or money for a
4 defense, on behalf of an insured under a contract of insurance or indemnification.

5 (2) A person whose participation in the illegal drug market constitutes the
6 following level of offense shall be considered to have the following illegal drug market
7 target community:

8 (a) For a level 1 offense, all assembly districts that comprise the person's place
9 of participation.

10 (b) For a level 2 offense, the target community described in par. (a) plus all
11 assembly districts with a border contiguous to that target community.

12 (c) For a level 3 offense, the target community described in par. (b) plus all
13 assembly districts with a border contiguous to that target community.

14 (d) For a level 4 offense, the state.

15 **SECTION 3775r.** 895.12 of the statutes is created to read:

16 **895.12 Joinder, responsibility, contribution, and standard of proof.** (1)

17 **JOINDER OF PARTIES.** (a) Two or more persons may join in one action under s. 895.10
18 as plaintiffs if their respective actions have at least one place of illegal drug activity
19 in common and if any portion of the period of illegal drug use related to one plaintiff's
20 damages overlaps with the period of illegal drug use related to every other plaintiff's
21 damages.

22 (b) Two or more persons may be joined in one action under s. 895.10 as
23 defendants if those persons are liable to at least one plaintiff.

24 (c) A plaintiff need not be interested in obtaining and a defendant need not be
25 interested in defending against all the relief demanded. Judgment may be given for

1 one or more plaintiffs according to their respective rights to relief and against one
2 or more defendants according to their respective liabilities.

3 (2) COMPARATIVE RESPONSIBILITY. (a) Section 895.045 applies to an action under
4 s. 895.10.

5 (b) The burden of proving the comparative negligence of the plaintiff is on the
6 defendant, which shall be shown by clear and convincing evidence.

7 (c) Comparative negligence may not be attributed to a plaintiff who is not an
8 individual drug user.

9 (3) CONTRIBUTION AMONG AND RECOVERY FROM MULTIPLE DEFENDANTS. A person
10 subject to liability under s. 895.10 has a right of action for contribution against
11 another person subject to liability under that section. Contribution may be enforced
12 either in the original action or by a separate action brought for that purpose. A
13 plaintiff may seek recovery in accordance with s. 895.10 and existing law against a
14 person whom a defendant has asserted a right of contribution.

15 (4) STANDARD OF PROOF: EFFECT OF CRIMINAL DRUG CONVICTION. (a) Proof of
16 participation in the illegal drug market in an action brought under s. 895.10 shall
17 be shown by clear and convincing evidence. Except as otherwise provided in this
18 section and ss. 895.09, 895.10, 895.11, and 895.13, other elements of the cause of
19 action shall be shown by a preponderance of the evidence.

20 (b) A person against whom recovery is sought who has a criminal conviction
21 under ch. 961 or 21 USC 801 to 971, is estopped from denying participation in the
22 illegal drug market. Such a conviction is also prima facie evidence of the person's
23 participation in the illegal drug market during the 2 years preceding the date of an
24 act giving rise to a conviction.

1 (c) The absence of a criminal conviction described under par. (b) of a person
2 against whom recovery is sought does not bar an action against that person.

3 **SECTION 3775s.** 895.13 of the statutes is created to read:

4 **895.13 Attachment, execution, and stay.** (1) Except as provided in sub. (3),
5 a plaintiff under s. 895.10 may request an ex parte prejudgment attachment order
6 from the court against all assets of a defendant sufficient to satisfy a potential award.
7 If attachment is instituted, a defendant is entitled to an immediate court hearing.
8 The court may lift the attachment if the defendant demonstrates that the assets will
9 be available for a potential award or if the defendant posts a bond sufficient to cover
10 a potential award.

11 (2) A person against whom a judgment has been rendered under s. 895.10 is
12 not eligible to exempt any property, of whatever kind, from process to levy or process
13 to execute on the judgment.

14 (3) Any assets sought to satisfy a judgment in an action under s. 895.10 that
15 are named in a forfeiture action or that have been seized for forfeiture by any state
16 or federal agency may not be used to satisfy a judgment unless and until the assets
17 have been released following the conclusion of the forfeiture action or released by the
18 agency that seized the assets.

19 (4) The district attorney may represent the state or a political subdivision of
20 the state in an action brought under s. 895.10.

21 (5) On motion by a governmental agency involved in a drug investigation or
22 prosecution, an action brought under s. 895.10 shall be stayed until the completion
23 of the criminal investigation or prosecution that gave rise to the motion for a stay of
24 the action.”.

25 (END)